FILED
00 534 SEP 2 9 2000
OFFICE OF THE CLERK

No.

# In the
# Supreme Court of the United States

**ROBERT HARPER,**

*Petitioner,*

v.

**STATE OF ILLINOIS,**

*Respondent.*

**On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District**

## PETITION FOR WRIT OF CERTIORARI

ALLAN A. ACKERMAN, Esq.
*Counsel of Record*
2000 N. Clifton Avenue
Chicago, Illinois 60614
(312) 332-2891

SANTO J. VOLPE, Esq.
53 W. Jackson Boulevard
Suite 1460
Chicago, Illinois 60604
(312) 294-0050

*Attorneys for Petitioner Robert Harper*

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

29pp

## QUESTION PRESENTED

Certiorari should be granted because the decision below conflicts with the Court's Fourth Amendment decisions in *Illinois v. Wardlow*, ___ U.S. ___, 120 S.Ct. 673 (2000) and *Florida v. J.L.*, 529 U.S. ___, 120 S.Ct. 1375 (2000). Additionally, the Court has granted certiorari in *Illinois v. McArthur*, 120 S.Ct. 1830 (2000), to further determine Fourth Amendment seizure parameters.

1. Whether petitioner's seizure and frisk were in violation of the Fourth Amendment, where petitioner, a passenger exiting a vehicle after a traffic stop, was seized and frisked based on an anonymous police tip?

## TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL PROVISIONS INVOLVED ... 2

STATEMENT OF THE CASE ..... 2

REASONS FOR GRANTING THE PETITION .... 7

THE PRESENT ISSUE HAS BEEN LEFT OPEN BY THIS COURT IN *ILLINOIS v. WARDLOW* ..... 7

CONCLUSION ..... 13

### APPENDIX INDEX

Opinion Below ..... App. 1

Order denying Appellate Rehearing ..... App. 9

Illinois Supreme Court Order denying Discretionary Review ..... App. 10

## TABLE OF AUTHORITIES

*Cases* PAGE(S)

*Alabama v. White*,
496 U.S. 325 (1990) . . . . . 6

*City of Chicago v. Morales*,
527 U.S. 41, 119 S.Ct. 1849 (1999) . . . . . 11, 12

*Florida v. J.L.*,
529 U.S. ___, 120 S.Ct. 1375 (2000) . . 7, 9, 10, 13

*Florida v. Royer*,
460 U.S. 491 (1983) . . . . . 8, 9

*Illinois v. Gates*,
462 U.S. 213 (1983) . . . . . 6

*Illinois v. McArthur*,
713 N.E.2d 93 (4th Dist. Ill.
App. 1999) cert. granted,
120 S.Ct. 1830 (2000) . . . . . 12

*Illinois v. Wardlow*,
___ U.S. ___, 120 S.Ct. 673 (2000) . . . . 6, 7, 8, 13

*Minnesota v. Olson*,
495 U.S. 91 (1990) . . . . . 5, 6

*Wyoming v. Houghton*,
526 U.S. 295 (1999) . . . . . 7, 12

***United States Constitution***

United States Constitution
Fourth Amendment . . . . . 2

***Statutes and Rules***

28 U.S.C. Section 1257(a) . . . . . 1

Rule 13(1),
Rules of the Supreme Court . . . . . 1

***Other Authorities***

Blackstone's Commentaries,
1 W. Blackstone, Commentaries
on the Laws of England 130 (1765) . . . . . 11, 12

## PETITION FOR WRIT OF CERTIORARI

Robert Harper, petitioner, prays for a Writ of Certiorari to review the judgment of the Illinois Appellate Court, First District, entered on March 31, 2000.

## OPINIONS BELOW

The order and judgment of the Illinois Appellate Court, First District, Fourth Division, reversing the Circuit Court of Cook County order suppressing physical evidence was entered on March 31, 2000 and is unreported (reproduced at App. 1-8, *infra*). Petitioner's timely petition for rehearing in the Illinois Appellate Court was denied on April 26, 2000 (unreported-reproduced at App. 9, *infra*). The unreported order denying Illinois Supreme Court review was entered on July 5, 2000 (App. 10, *infra*).

The order of the Circuit Court of Cook County granting petitioner's motion to suppress physical evidence was entered on March 24, 1999 and is unreported.

## JURISDICTION

The order of the Illinois Appellate Court, First District, Fourth Division was entered on March 31, 2000. Petitioner's application for appellate rehearing was denied on April 26, 2000. Petitioner's request for Illinois Supreme Court review was denied on July 5, 2000. This Petition for a Writ of Certiorari is filed within 90-days of that order as required by Rule 13(1) of the Rules of the Supreme Court. The case below was decided on federal constitutional law and the Fourth Amendment. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

## CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the U.S. Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

1. *Trial court proceedings.* Petitioner, Robert Harper (petitioner), was charged by the Cook County, Illinois Grand Jury on September 9, 1996 under Indictment No. 96 CR 4220, with two counts of unlawfully possessing controlled substances (Org. Rec. 5-7). Petitioner was represented by counsel and remains enlarged on bail. Petitioner filed a pretrial motion to suppress physical evidence and a hearing was held on this motion on March 24, 1999.

The only witnesses testifying during the Cook County Circuit Court suppression hearing were Riverdale, Illinois police Officers William Meginnis (Meginnis) and John Dempsey (Dempsey). Meginnis testified that during the evening hours of December 5, 1995 petitioner was arrested and searched *sans* an arrest or search warrant, and at the time of the arrest petitioner had not violated any laws or ordinances (A. Tr. 6-9).[1] At

---

[1] The March 24, 1999 suppression transcript is reproduced in the original record at A-Tr. 1-77.

approximately 6 p.m. on December 5, 1995, a Riverdale police dispatcher directed Meginnis and Dempsey to 13622 Lowe Avenue in Riverdale based on an anonymous telephone call which reported that petitioner was "cooking up" crack cocaine in the kitchen at that address. Either during the first or second anonymous call, the dispatcher reported that the cocaine would be shortly transported in a Ford Escort displaying an Illinois license plate VAS 622 (*id.* at 9, 30). Meginnis testified that he drove a marked patrol car to the address and went down an alley behind the premises, but because there were barking dogs in the backyard—they departed without attempting to view the petitioner through a kitchen window (*id.* at 16-17, 31-32). Meginnis and Dempsey then returned to the Riverdale police station (*id.* at 32). At the police station, Meginnis looked through local arrest records and found that petitioner had been arrested earlier in 1995 and the police report indicated that petitioner lived at the Lowe address. Meginnis then provided petitioner's photograph to other-on-duty officers (*id.* at 20-21, 34-35).

At about 8:30 p.m. on the same evening, another anonymous tip was called in which was passed on to Meginnis and Dempsey. That anonymous tip reported that petitioner would be driving the Ford Escort and transporting cocaine (*id.* at 17-18). Meginnis and Dempsey drove to the front of the Lowe address, while Officer Barron, in a marked car, went to the rear (*id.* at 17-18). A short time later Barron notified Meginnis and Dempsey that petitioner was in the front seat of the Ford Escort (which was being driven by an unknown woman). Officers Barron, Meginnis and Dempsey fol-

lowed the red Escort for several blocks until the driver abruptly pulled into a well-lit gas station parking lot. The vehicle stopped and the Riverdale police blocked the exits (*id.* at 18-19, 22-24, 57). According to Meginnis, petitioner, as a passenger, had nothing to do with any traffic violation, and when the vehicle stopped, petitioner exited the front passenger seat and began walking away—according to Meginnis—Dempsey grabbed petitioner and stopped him from running (*id.* at 24, 30). Meginnis testified that he asked petitioner whether he had anything on his person which would be of concern to the police—petitioner remained reticent (*id.* at 40). Petitioner was then escorted back to the vehicle where Meginnis did a protective pat-down "search," recovering a purple Crown Royal bag from petitioner's coat pocket which contained chunks of crack cocaine (*id.* at 24-26).

Officer Dempsey testified that when petitioner exited the vehicle and began walking away, his hands were in his coat pocket. According to Dempsey, he ordered petitioner to stop and remove his hands from his coat pocket and petitioner immediately complied (*id.* at 51). Dempsey asked petitioner whether he had anything on his person which would concern the police—petitioner did not respond (*id.* at 52). Dempsey told petitioner he was going to pat him down for safety purposes and commenced searching petitioner's coat, ultimately recovering the purple Crown Royal bag containing suspect crack cocaine. Dempsey opined that when he saw petitioner, he [petitioner] was not violating any laws (*id.* at 56).

Following Dempsey's testimony and the arguments of counsel, the circuit court in a bench ruling, ordered the

drugs seized from petitioner during the early evening hours of December 5, 1999 [be] suppressed. *Inter alia,* the trial court held that there was a valid traffic stop and that petitioner got out of the car and commenced walking away (*id.* at 74-75). Petitioner was told to stop, take his hands out of his pocket and return toward the vehicle. Petitioner complied and was then asked a question regarding whether petitioner had anything which would be of concern to the police and petitioner did not respond. The circuit court held that there was never any indication by the seizing/searching officer(s) that he [they] were in any actual fear for their own safety nor were there any furtive acts by the petitioner. Further, when he patted petitioner down, he felt a bag with rock-like substances which might contain cocaine, but the officer did not testify that he was in fear of his safety or that the pat-down disclosed anything described as a weapon or that which could be mistaken for a weapon (*id.* at 75-77).[2] The trial court reasoned that the anonymous calls to the Riverdale police department [regarding petitioner] provided no basis for a warrant, and while the traffic stop was valid, there was nothing to implicate petitioner as a traffic offender. Further, there was no prosecution testimony regarding furtive actions by petitioner, nor any testimony that any officer was actually in any fear of his own safety (summarizing suppression findings of March 24, 1999 at A. Tr. 75-77).

The Illinois prosecutor requested an "appeal date" indicating they would be citing *Minnesota v. Olson*, *id.*

---

[2] The State apparently cited *Sibron* [*v. New York*, 392 U.S. 40, 88 S.Ct. 1889 (1968)] in support of suppression, *id.* at 77.

at 77. On April 7, 1999, the prosecutor sought suppression reconsideration arguing, *inter alia, Illinois v. Gates* and *Alabama v. White* (B. Tr. 7). The circuit court declined to change the suppression ruling, noting that based on the anonymous tip, nothing was done because there were dogs barking in the backyard, and the traffic stop was not based on any prior informant information (*id.* at 8). Further, when the officer asked if petitioner had anything that would be of concern to the police, petitioner did not respond and the officer indicated petitioner was patted down for his personal safety—"but there was no indication that this was any *Terry* stop type of situation which developed or that the officer was in fear of his personal safety" (*id.* at 9). Regarding what the petitioner actually did—petitioner returned as the officer directed, but did not respond to the question, "but I don't think he has any duty to do that," *id.* at 10.

2. *Appellate proceedings.* Illinois prosecuted a direct appeal to the Illinois Appellate Court, First District, contending that the trial court suppression order was erroneous. In a nutshell, Illinois contended that the confluence of circumstances during the early evening hours of December 5, 1999 were such that the conduct of the police officers, acting pursuant to anonymous tips, acted properly in directing that petitioner stop, take his hands from his pockets, answer questions and submit to [a] pat-down search. Illinois successfully contended to the intermediate Illinois reviewing court that the police actions did not contravene the Fourth Amendment. The Appellate Court, citing, *inter alia*, *Illinois v. Wardlow*, ___ U.S. ___, 120 S.Ct. 673 (2000) and *Wyoming v. Houghton*, 526 U.S. 295, 119 S.Ct.

1297 (1999), concluded that the trial court erred in ordering suppression of the physical evidence (App. 7, *infra*). Petitioner sought appellate rehearing and Illinois Supreme Court review, absent success (App. 9, 10, *infra*).

Predicated on the unresolved questions in Chief Justice Rehnquist's opinion for the Court in *Illinois v. Wardlow*, ___ U.S. ___, 120 S.Ct. 673 (2000) and *Florida v. J.L.*, 529 U.S. ___, 120 S.Ct. 1375 (2000), petitioner seeks certiorari and vacation of the Illinois Appellate Court's decision reversing the circuit court suppression order. Petitioner also notes that the Court has granted certiorari in *Illinois v. McArthur*, 120 S.Ct. 1830 (2000), to further determine Fourth Amendment seizure parameters.

## REASONS FOR GRANTING THE WRIT

### THE PRESENT ISSUE HAS BEEN LEFT OPEN BY THIS COURT IN *ILLINOIS v. WARDLOW*

The present case squarely presents the significant issues left unanswered in *Illinois v. Wardlow*. In *Wardlow*, Chief Justice Rehnquist explained:

> (1) We granted certiorari solely on the question of whether the initial stop was supported by reasonable suspicion. *Therefore, we express no opinion as to the lawfulness of the frisk independently of the stop.*[3]
>
> (2) But in this case the officers found respondent in possession of a handgun, and arrested

---

[3] 120 S.Ct. at 676, n. 2 (ital. emph. added).

> him for violation of an Illinois firearms statute. *No question of the propriety of the arrest itself is before us.*[4]

In the case at hand, petitioner challenged both the propriety of his December 5, 1995 arrest and the lawfulness of the police frisk [pat-down] by virtue of his pretrial motion to suppress physical evidence. The suppression testimony revealed that petitioner was not violating any laws or ordinances at the time of his arrest, and the arresting Riverdale police officers had neither an arrest or search warrant for petitioner (A-Tr. 6-9, 56). The trial court held that in the absence of probable cause, the Riverdale police officers lacked constitutional justification for the subsequent pat-down-search of petitioner's person. *Id.* at 75-77.[5]

The Court in *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319 (1983), considered whether a citizen must stop and listen to/answer questions posed by the police. In part, the Court explained:

> The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. *Terry v. Ohio*, 392 U.S., at 32-33, 88 S.Ct., at 1885-1886 (Harlan, J., concurring); *id.* at 34, 88 S.Ct. at 1886 (WHITE, J., concur-

---

[4] 120 S.Ct. at 677 (ital. emph. added).

[5] The Illinois Appellate Court cited *Wardlow* for the proposition that "evasive action taken by the driver of the vehicle in which the defendant was riding gave rise to a reasonable suspicion that criminal activity was afoot" (App. 7, *infra*). Petitioner asserts that *Wardlow's* impact on the case at hand arises from the unexplored constitutional propositions not presented or answered in *Wardlow*.

> ring). He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. *United States v. Mendenhall, supra,* 446 U.S., at 556, 100 S.Ct., at 1878 (opinion of Stewart, J.).

460 U.S. at 498.

Blending *Royer* and *Wardlow*, it is clear that petitioner did nothing more than that which is constitutionally permissible—he commenced walking away from a vehicle which was stopped for traffic violations, then complied with police demands that he stop, but refused to answer questions posed by the arresting officers. *Royer* notes that a citizen need not either listen or answer, and *Wardlow* left open the very questions posed by petitioner.

In addition to the above, in *Florida v. J.L.*, 529 U.S. ___, 120 S.Ct. 1375 (2000), Justice Ginsburg explored the nuances and viability of bare-boned anonymous tips. In the case at hand, just as in *J.L.*, there was nothing beyond anonymous tips during the evening hours of December 5, 1995. In *J.L.*, the Court affirmed the suppression of the weapon seized based on an arrest bottomed on an anonymous tip. In part, Justice Ginsburg explained:

> The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about *J.L.* If *White* was a close case

> on the reliability of anonymous tips, this one surely falls on the other side of the line.
>
> * * * *
>
> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. * * *

120 S.Ct. at 1379.[6]

The circuit court suppression hearing noted that the initial anonymous tip claimed that petitioner was at the Lowe address "cooking [crack] cocaine," yet when Officers Meginnis and Dempsey attempted to verify the bare-boned information, barking dogs in the backyard aborted an attempt to look through a kitchen window for anonymous tip validation. After attempted observations failed to confirm an anonymous tip, the officers returned to the local police station. Meginnis located an antecedent arrest report involving petitioner, listing petitioner at the Lowe address (Meginnis knew or should have known that the charges had been dismissed). Based on additional anonymous calls to the Riverdale police dispatcher, Meginnis, his partner and another officer returned to the Lowe address, ultimate-

---

[6] Within the fabric of petitioner's request for discretionary Illinois Supreme Court review, he cited impacting segments of *Florida v. J.L.* (pg. 16 of petitioner's Illinois Supreme Court filing).

ly observing a vehicle, driven by a woman, departing the Lowe address with petitioner in the passenger seat. The vehicle was followed, and after a series of [alleged] traffic violations, the vehicle was stopped in a well-lit gas station.[7] Petitioner got out of the vehicle, and commenced walking. Police officers directed that he stop—which he did—and remove his hands from his coat pocket—which he did—and then they asked him a question or two which he refused to answer. With that, a pat-down [search] of his person ensued and a cloth bag containing cocaine was recovered. It must be recalled that during the suppression testimony, the police acknowledged that petitioner was committing no offenses and they had no warrant to arrest or search when his walk was interrupted by police directive.

In *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849 (1999), the Court affirmed an Illinois Supreme Court decision finding a Chicago gang-loitering ordinance constitutionality infirm. In part, Justice Stevens noted:

> We have expressly identified this "right to remove from one place to another according to inclination" as "an attribute of personal liberty" protected by the Constitution. * * * Indeed, it is apparent that an individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is "a part of our heritage" *Kent v. Dulles*, 357 U.S. 116, 126, 78 S.Ct. 1113, 2 L.Ed.2d 1204 (1958), or the right to move "to whatsoever place one's own inclination may

---

[7] The record fails to disclose the disposition of the traffic violations ascribed to the female driver.

> direct" identified in Blackstone's Commentaries. 1 W. Blackstone, Commentaries on the Laws of England 130 (1765).

119 S.Ct. at 1857-58 (citations and nn. 20-21 omitted).

The appellate panel cited *Wyoming v. Houghton*, 526 U.S. 295, 119 S.Ct. 1297 (1999), for the apparent proposition that the driver and passenger may have been engaged in a common enterprise [of wrongdoing] and thus had the same interests in concealing evidence (App. 7, *infra*). *Houghton* involved the search of a purse found in a car which had been stopped for a traffic violation. The arresting officer noticed that the driver had a hypodermic syringe in his shirt pocket. After the driver and passengers were removed from the car, *Houghton's* purse (which was still in the car) was searched and drugs were recovered. The question before the Court was whether the Fourth Amendment was violated when the police searched a passenger's personal belongings *inside an automobile that they have probable cause to believe contains contraband*, 526 U.S. 295, 119 S.Ct. at 1299. The Court, consistent with earlier precedent, held that where there is probable cause to search a lawfully stopped car, it justifies the search of every part of the vehicle and its contents, 119 S.Ct. at 1303-04 (Scalia, J., for the Court). Simply stated, there is no useful parallel between *Houghton* and petitioner's case.[8]

---

[8] The Court recently granted certiorari in *Illinois v. McArthur*, 120 S.Ct. 1830 (2000). In part, the Illinois Appellate opinion in *McArthur* considered when a person was seized within the meaning of the Fourth Amendment, 713 N.E.2d at 98 (1999).

This petition provides an appropriate vehicle for the Court to consider both the parameters of *Florida v. J.L.* and the significant Fourth Amendment questions raised, but left unresolved in *Illinois v. Wardlow*.

## CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this Honorable Court grant the instant petition for Writ of Certiorari to review the judgment of the Illinois Appellate Court, First District.

Respectfully submitted,

ALLAN A. ACKERMAN, Esq.
*Counsel of Record*
2000 N. Clifton Avenue
Chicago, Illinois 60614
(312) 332-2891

SANTO J. VOLPE, Esq.
53 W. Jackson Boulevard
Suite 1460
Chicago, Illinois 60604
(312) 294-0050

*Attorneys for Petitioner*
*Robert Harper*

# APPENDIX

App. 1

[Filed March 31, 2000]

1-99-1522

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Cook County |
| Plaintiff-Appellant, | ) | |
| v. | ) | No. 96 CR 4220 |
| ROBERT HARPER, | ) | Honorable George M. Morrissey, Judge Presiding. |
| Defendant-Appellee. | ) | |

ORDER

The state appeals from an order of the circuit court granting the defendant's motion to quash his arrest and suppress evidence recovered from his person. For the reasons which follow we reverse the circuit court's order and remand this cause for further proceedings

The defendant, Robert Harper, was charged with possession of a controlled substance and possession of a controlled substance with intent to deliver. He filed a motion to quash his arrest and suppress evidence taken from his person, contending that his warrantless arrest was made without probable cause and that he was subjected to a warrantless, nonconsensual search. The State responded to the motion, arguing both that the police possessed probable cause to arrest the defendant and that the evidence sought to be suppressed was

taken from the defendant during a search incident to an investigatory stop permissible under *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S.Ct. 1868 (1968). Two of the arresting police officers, William Meginnis and John Dempsey, testified at the hearing on the defendant's motion. After the hearing, the trial Court determined that the police lacked probable cause to arrest the defendant and also lacked the requisite reasonable suspicion that he was committing a crime in order to justify a *Terry* stop. The trial court granted the defendant's motion and denied the state's subsequent motion for reconsideration. This appeal followed.

Certain of the facts relevant to this case as testified to by Officers Meginnis and Dempsey are not in dispute. On December 5, 1995, a Riverdale police dispatcher informed the two officers that an anonymous caller had telephoned and reported that a person named Robert Harper was in the kitchen of his home at 13622 Lowe Avenue cooking crack cocaine. The caller also stated that Harper could be seen cooking the cocaine through the kitchen window. According to the caller, the narcotics would be transported in a red Ford Escort, license number VAS 662 (the Ford). Officer John Giroux of the Northeastern Metropolitan Enforcement Group also called the Riverdale police station and reported that he had received the same information from an anonymous informant.

Officers Meginnis and Dempsey proceeded to 13622 Lowe Avenue, where they observed the Ford parked in the rear next to a Buick automobile. A registration check on the vehicles revealed that the Ford was not registered to a Robert Harper but that the Buick was.

Due to the presence of several dogs in the yard, the officers were unable to look through the kitchen window of the residence. After maintaining a surveillance at that location for a period of time, the officers returned to the police station where Officer Meginnis verified that a man named Robert Harper, who had been arrested previously, had given 13622 Lowe Avenue as his address. Copies of Robert Harper's photograph were then distributed to all of the officers on duty.

At 8:30 p.m., the police dispatcher informed Officers Meginnis and Dempsey that the anonymous caller had telephoned again and stated that Robert Harper would be leaving 13622 Lowe Avenue immediately and transporting crack cocaine in the Ford. The officers immediately drove to the location and watched the front of the residence while officer Ted Barron watched the rear.

Shortly after the officers began their surveillance, Officer Barron informed officers Meginnis and Dempsey that a woman was driving the Ford from the rear of the residence with Robert Harper riding in the front passenger seat. The officers, traveling in two marked police vehicles, followed directly behind the Ford. Upon reaching 138th and Halsted, the driver of the Ford made an abrupt turn, shot across both a traffic lane and a curb lane, and entered a gas station lot. Once in the gas station lot, the Ford began traveling at a high rate of speed. Officer Barron activated the lights on his police vehicle and, with the help of two other police vehicles, blocked the exits from the gas station lot, and brought the Ford to a halt.

When the Ford stopped, the defendant, Robert Harper, exited the vehicle and began walking at a fast pace.

According to Officer Meginnis, the defendant leaned forward as if he was going to run, at which time Officer Dempsey grabbed him and stopped him from running. According to Officer Dempsey, he ordered the defendant to stop, and the defendant immediately complied. After the defendant stopped, Officer Dempsey told him to take his hands out of his pockets and did a protective pat down search. When he searched the defendant, Officer Dempsey recovered a purple Crown Royal bag within which he found four clear plastic baggies, containing chunks of a substance suspected to be crack cocaine.

The issue of whether probable cause exists for an arrest is a mixed question of law and fact. *People v. Lippert*, 89 Ill.2d 171, 177 (1982). Generally, a trial court's ruling on a motion to quash an arrest and suppress evidence will not be reversed unless it is manifestly erroneous. *People v. Dilworth*, 169 Ill.2d 195, 201 (1996); *People v. Foskey*, 136 Ill.2d 66, 76 (1990). This deferential standard of review applies where the outcome of the motion turns upon findings of fact. *People v. Gonzales*, 184 Ill. 2d 402, 412 (1998). However, when the facts are not contested, the issue of whether probable cause exists is a question of law and subject to a *de novo* review. *Foskey*, 136 Ill.3d at 76.

In this case, the only disputed fact was whether the defendant was about to begin running when he was stopped by Officer Dempsey. Officer Meginnis testified that the defendant was about to begin running when Officer Dempsey grabbed him. Officer Dempsey testified that the defendant stopped immediately upon being ordered to do so. The trial court believed Officer Dempsey's version of the event, and we cannot say that the

determination was either manifestly erroneous or against the manifest weight of the evidence. Taking this disputed fact as found by the trial court along with the remaining undisputed facts, we will conduct a *de novo* review. See *Gonzalez*, 184 Ill.2d at 412.

In urging reversal of the trial court's order granting the defendant's motion the State argues that the police had probable cause to arrest the defendant and search his person. We agree.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend IV. However, as our supreme court noted in Gonzalez: "the parameters of this right are shaped by the context in which the right is asserted, for 'what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.' *Elkins v. United States*, 364 U.S. 206, 222, 4 L.Ed. 2d 1669, 1680, 80 S.Ct. 1437, 1446 (1960)." *Gonzalez*, 184 Ill. 2d at 413.

A warrantless arrest based on probable cause is lawful, and any evidence obtained during a warrantless search conducted incident to that arrest is admissible. *People v. Tisler*, 103 Ill. 2d 226, 237 (1984). Probable cause exists when the police have knowledge of facts which would lead a reasonable person to believe that a crime has occurred and that the defendant is the person who committed the crime. *People v. Wright*, 111 Ill. 2d 128, 145 (1985). In determining whether probable cause exists, "a balance * * * [must be] struck between the interests of privacy and law enforcement."

*Wright*, 111 Ill. 2d at 146. "[W]here the question is whether a crime has been committed, as opposed to whether a particular individual committed a known crime, more evidence will be required to satisfy the probable cause requirement." *In re D.G.*, 144 Ill. 2d 404, 410 (1991).

"Although probable cause may be established with less than proof beyond a reasonable doubt, the evidence must be supported by some indicia of reliability." *People v. Wilson*, 260 Ill.App. 3d 364, 369 (1994). Uncorroborated tips From unknown informants do not constitute probable cause. See *People v. Hollins*, 169 Ill. App. 3d 304, 308 (1988). Probable cause, however, may be established by information received from an informant's tip provided that the information is supported by indicia of reliability. See *Tisler*, 103 Ill. 2d 226; *People v. Aguilar*, 286 Ill. App. 3d 493, 496 (1997). Guided by these principles, we turn to the facts of this case.

The record reveals that the police had far more than a mere, uncorroborated tip from an unknown informant to support their arrest of the defendant. Officers Meginnis and Dempsey verified information given by the informant, namely that the Ford was parked in the rear of l3622 Lowe Avenue; that the defendant lived at that address; and that the defendant left his residence traveling in the Ford. Even after having corroborated this information, the police did not arrest the defendant. It was only after the vehicle in which he was riding undertook evasive maneuvers and attempted to cut through a gas station lot at a high rate of speed that the police stopped the vehicle. When the vehicle came to a stop, the defendant got out and started walking away quickly.

The facts which were corroborated by the officers are evidence of the reliability of the caller's information. The evasive action taken by the driver of the vehicle in which the defendant was riding gave rise to a reasonable suspicion that criminal activity was afoot. See *Illinois v. Wardlow*, ___ U.S. ___, ___ L.Ed. 2d ___, 120 S.Ct. 673 (2000). The fact that the defendant was not the driver of the vehicle does not affect our conclusion in this regard as the driver and passenger of a motor vehicle will often be engaged in a common enterprise and have the same interest in concealing the evidence of wrongdoing. See *Wyoming v. Houghton*, 526 U.S. 295, 143 L. Ed. 2d 408, 119 S. Ct. 1297 (1999). Taking all of these factors into consideration, we believe that the police had sufficient knowledge of facts and circumstances which would lead a reasonable person to believe that the defendant was committing a crime.

The defendant also argued that his arrest and the search of his person violated article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art I, §6). The Illinois Supreme Court, however, although not required to do so, has held that the search and seizure provisions of the Illinois Constitution afford no greater protection than do the parallel provisions set forth in the Fourth Amendment to the Federal Constitution. *Tisler*, 103 Ill. 2d at 241-45. Having determined that the defendant's arrest and the search of his person did not violate his Fourth Amendment rights, we necessarily find no violation of the Illinois Constitution.

For the foregoing reasons, we reverse the order of the circuit court quashing the defendant's arrest and suppressing the evidence taken from his person, and

remand this case to the circuit court for further proceedings.

Reversed and remanded.

HOFFMAN, P.J., with SOUTH and BARTH, JJ., concurring.

[Entered April 26, 2000]

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| Plaintiff-Appellant, | ) | |
| v. | ) | No. 1-99-1522 |
| ROBERT HARPER, | ) | Honorable George M. Morrissey, |
| Defendant-Appellee. | ) | Judge Presiding. |

ORDER

This cause coming to be heard on the Petition For Rehearing, of the Defendant-Appellee, **ROBERT HARPER**, and the Court being fully advised in the premises:

**IT IS HEREBY ORDERED:** that, the Petition for Rehearing be denied.

ENTER:

/s/ Thomas E. Hoffman
JUSTICE

/s/ Leslie E. South
JUSTICE

/s/ Francis Barth
JUSTICE

GILBERT S. MARCHMAN, CLERK
OF THE APPELLATE COURT, FIRST DISTRICT

[Letterhead]

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
89595 Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

July 5, 2000

Mr. Allan A. Ackerman
Attorney at Law
2000 N. Clifton Ave.
Chicago, IL 60614

No. 89595 - People of the State of Illinois, respondent, v. Robert Harper, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on July 27, 2000.